

EXHIBIT 11
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BEFORE THE DEPARTMENT OF JUSTICE
FOR THE STATE OF MONTANA

In the matter of the)
application for a certificate)
of public advantage by the)
Columbus Hospital and Montana)
Deaconess Medical Center,)
Great Falls, Montana.)

✓ CON, p. 44

AMENDED
FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND CERTIFICATE OF
PUBLIC ADVANTAGE

This matter is before the Department of Justice on the application of Columbus Hospital and Montana Deaconess Medical Center ("Applicants") for a Certificate of Public Advantage pursuant to Mont. Code Ann. title 50, chapter 4, part 6, for the proposed consolidation of the two facilities. In accordance with Mont. Admin. R. 23.18.103(4), the Department now issues the following Findings of Fact, Conclusions of Law, and Certificate of Public Advantage ("COPA"), subject to the terms and conditions that follow.

I. DEFINITIONS

1. "Columbus" refers to Columbus Hospital, a general acute-care nonprofit hospital located at 500 Fifteenth Avenue South, Great Falls, Montana.
2. "MDMC" refers to Montana Deaconess Medical Center, a general acute-care nonprofit hospital located at 1101 Twenty-sixth Street South, Great Falls, Montana.
3. "Consolidated Hospital" refers to the entity, by whatever name, existing after the consolidation of MDMC and Columbus, its successors and assigns, and any entity controlling or controlled by the consolidated entity.

4. "Sisters of Providence" means the Sisters of Providence, St. Ignatius Province, and any entity controlling or controlled by that entity.

5. "Department" refers to the Montana Department of Justice.

6. "Applicants" refer to Columbus and MDMC.

7. "Managed care plan" means a health maintenance organization, preferred provider organization, or other health service purchasing program which uses financial or other incentives to prevent unnecessary services and includes some form of utilization review.

8. "Person" means any individual, firm, partnership, association, organization, agency, institution, corporation, trust, estate, or governmental unit, whether organized for profit or not.

9. "Joint Commission on Accreditation of Health Care Organizations" or "JCAHO" means the organization nationally recognized by that name with headquarters in Chicago, Illinois, that surveys health care facilities upon their requests and grants accreditation status to a health care facility that it finds meets its standards and requirements.

10. "Health plan" means an organized health service purchasing program, including but not limited to managed care plans, offered by third-party payers, health care providers or any other person. "Health Plans" does not include organized health services or purchasing programs provided by the Consolidated Hospital to its employees.

11. "Health care costs" means the amount paid by consumers or third-party payers for health care services or products. Mont. Admin. R. 23.8.101(3).

12. "Health care provider" or "provider" means a person who is licensed, certified, or otherwise authorized by the laws of Montana to provide health care in the ordinary course of business or practice of a profession.

13. "Service area" means the fourteen counties of North Central Montana, including Cascade, Hill, Glacier, Fergus, Valley, Blaine, Pondera, Teton, Chouteau, Phillips, Toole, Liberty, Judith Basin, and Meagher.

14. "Acute care inpatient hospital services" means 24-hour inpatient health care, and related medical, surgical, diagnostic and treatment services, for physically injured or sick persons with short-term or episodic health problems or infirmities.

15. "Ambulatory surgery facility" means a facility that provides surgical treatment to patients not requiring hospitalization. This type of facility may include observation beds for patient recovery from surgery or other treatment.

16. "Master Indenture" refers to the Master Trust Indenture dated as of October 1, 1985, between Sisters of Charity of Providence of Montana and Mellon Bank, N.A., as Master Trustee, as heretofore amended and supplemented and as it may hereafter be amended or supplemented.

II. THE APPLICANTS

Columbus is a general acute-care nonprofit hospital founded in 1892 by the Sisters of Providence, St. Ignatius Province, an affiliate of the Catholic Church. Applicants' Documents at

1046-47.¹ Columbus is licensed to operate 198 beds; it has 145 available beds and routinely staffs 80 beds. Comments Response at p. 6. The 1995 average daily census at Columbus was 74. Id. The Sisters of Providence operate five hospitals in Montana and two hospitals in Washington. All of these institutions receive management, financial and consulting services from the Central Provincial Administration located in Spokane, Washington. Applicants' Documents at 1047-48.

MDMC is a general acute-care nonprofit hospital founded in 1898 by members of the Methodist Church. The medical center is now operated as a private community hospital governed by a self-perpetuating volunteer board of nine community leaders. Applicants' Documents at 606. MDMC is licensed to operate 288 beds, with 178 available beds and 140 beds that are routinely staffed. Comments Response at p. 6. The average daily census in 1995 at MDMC was 115. Id.

The traditional health-care service area for the Great Falls hospitals is the fourteen counties of North Central Montana,

¹ Citations to the record refer to the following sources: (1) Memorandum in Support of Application for Certificate of Public Advantage for Great Falls Hospital Merger, Oct. 2, 1995 ("Memorandum"); (2) Appendices to Memorandum in Support of Application for Certificate of Public Advantage for Great Falls Hospital Consolidation ("Appendices"); (3) Response of Columbus Hospital and Montana Deaconess Medical Center to Montana State Attorney General's Request for Additional Information submitted Nov. 10, 1995 ("Response"); (4) Documents produced by Applicants in Response to Attorney General's Request for Additional Information ("Applicants' Documents"); (5) Formation Committee Facilities Utilization Statement dated Jan. 4, 1996 ("Formation Committee Statement"); (6) O.R. Surgical Task Force Operating Room Utilization Analysis dated Jan. 4, 1996 ("O.R. Utilization Analysis"); (7) Report prepared by National Economic Research Associates, Inc. ("Economists' Report"); (8) Written comments submitted by the public and interested parties ("Comments"); (9) Interviews conducted by the Department during its investigation of the Application ("Interviews"); (10) Transcript of the Jan. 24, 1996 public hearing ("Tr."); and (11) Applicants' Jan. 23, 1996 Response to Comments ("Comments Response").

including Cascade, Hill, Glacier, Fergus, Valley, Blaine, Pondera, Teton, Chouteau, Phillips, Toole, Liberty, Judith Basin and Meagher. Applicants' Documents at 611; Application at (f)(vi). Over the last several years, the market share split of inpatient volume for patients receiving care in Great Falls has approximated 60% for MDMC and 40% for Columbus. Applicants' Documents at 699; Appendices, Ex. H at 29.

The Great Falls hospitals compete to some extent with hospitals in Billings, Missoula and other cities for high-level tertiary services. Applicants' Documents at 615, 700; Memorandum at 4-5; Tr. at 19:15-23, 25:14-19. The Applicants have acknowledged, however, that with respect to at least some general acute inpatient services, the proposed consolidation will "create a monopoly." Laura Goldhahn-Konen Interview, *Great Falls Tribune*, Apr. 24, 1995. The Applicants also concede that "historically there has been very little competition . . . between Columbus and MDMC." Memorandum at 69. Managed care has not yet become a significant force in Great Falls. *Id.* at 17. In 1994, case mix adjusted costs per case were 6.5% higher in Great Falls than in Billings and up to 20% higher than in other small cities in the western United States. Appendices, Ex. C at 7.

Based on the increase in market concentration resulting from the consolidation, the Department concludes that the proposed consolidation, without a certificate of public advantage, would likely violate state and federal antitrust laws. Pursuant to Mont. Code Ann. § 50-4-601, the Department's supervision and regulation of the proposed consolidation will have "the effect of granting the applicants state action immunity for actions that might otherwise

be considered to be in violation of state or federal, or both, antitrust laws." Id.

III. BACKGROUND

In 1993, the Montana legislature created the Montana Health Care Authority and charged it with, inter alia, reviewing and approving cooperative agreements between health care facilities. The Authority was given power to issue a COPA if it found that the cooperative agreement was "likely to result in lower health care costs or greater access to or quality of health care than would occur in absence of the agreement." 1993 Mont. Laws ch. 606, § 39.

When the Health Care Authority was abolished in 1995, these duties and responsibilities were transferred to the Department of Justice. 1995 Mont. Laws ch. 378, §§ 19, 21. In addition, the statute was extended to cooperative agreements among physicians and was further amended to authorize a COPA for mergers and consolidations among health care facilities or physicians. 1995 Mont. Laws ch. 526, §§ 2-3 (codified at Mont. Code Ann. §§ 50-4-602, -603). The standard for issuance of a COPA also was amended, and the statute now authorizes the granting of a certificate if "the department finds that the [consolidation] is likely to result in lower health care costs or is likely to result in improved access to health care or higher quality health care without any undue increase in health care costs." Mont. Code Ann. § 50-4-603(2).

The purpose of the COPA act is to "control[] health care costs and improv[e] the quality of and access to health care" by providing the state, through the Department, "with direct supervision and control over the implementation of cooperative